

**Amendment No. 1 to SB2976**

**Haun  
Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 2976\***

**House Bill No. 3100**

By deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding sections 2 through 14 of this act as a new, appropriately designated chapter:

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Off-Highway Motor Vehicle Act".

SECTION 3.

(a) The number of off-highway motor vehicle, hereinafter referred to as "OHV", users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of a program to manage OHV use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects.

(b) The general assembly finds and declares the need to manage OHVs to maximize economic and recreational opportunities, to protect the environment of this state and to insure that adequate revenue is generated for such purpose.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Agency" means the Tennessee wildlife resources agency authorized pursuant to Title 70.

(2) "Commission" means the Tennessee wildlife resources commission authorized pursuant to Title 70.

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(3) "Director" means the executive director of the Tennessee wildlife resources agency, the director's duly authorized representative and, in the event of the director's absence or a vacancy in the office of director, the assistant director of the Tennessee wildlife resources agency.

(4) "Dealer" means a person licensed by the proper state authorities to engage in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles or possessing motor vehicles for the purpose of resale either on that person's own account or on behalf of another, either as that person's primary business or incidental thereto, pursuant to Title 55.

(5) "Off-highway motor vehicle or OHV" means any motorized vehicle capable of traveling off highways within the state including, but not limited to, all-terrain vehicles, off-road motorcycles, dune buggies, and other four-wheeled vehicles used primarily for off-road activities. The term does not include motor vehicles designed and used primarily for on-roadway activities; and,

(6) "Owner" means the person in whose name the motor vehicle is titled.

**SECTION 5.**

(a) The owner of any OHV shall annually register the vehicle with the director, in the manner prescribed by the director. Registration information shall include, but is not limited to, the name and address of the owner, the type of vehicle, the license number, if any, the vehicle identification number, proof of registration pursuant to Title 55, if applicable, and that all applicable sales taxes and capital fees have been paid.

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(b) Each person, upon filing the registration or renewal, shall pay a registration fee of forty-five dollars (\$45.00) to the director, except that the fee shall be ten dollars (\$10.00) for any person possessing a valid combination hunting and fishing license or sportsman license. The registration fee may be increased no more frequently than once every twelve (12) months by the commission as provided for in this act and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

(c) Upon the sale or transfer of an off-highway motor vehicle, the dealer may register the vehicle on behalf of, and in the name of, the vehicle owner, with the director, in the manner prescribed by the director. The dealer may also collect and pay the registration fee to the director on behalf of, and in the name of, the vehicle owner.

(d) Registration information shall include, but is not limited to, the name and address of the owner, the type of vehicle, the license number, if any, and the vehicle identification number.

(e) Registration shall not be required while an OHV is in use by a landowner or lessor, their spouses or dependent children on land that such landowner or lessor resides or manages.

SECTION 6. The director is authorized to:

- (1) Establish and implement an OHV program by July 1, 2003;
- (2) Establish a registration program by February 28, 2003;

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(3) In cooperation with other governmental agencies and vehicle dealers, develop a voluntary OHV education program for existing and potential owners and users;

(4) Develop a voluntary OHV education program designed specifically to educate dealers and owners of the state's tax provisions and requirements and the penalties associated with the failure to pay such taxes;

(5) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for all lands used for OHV user purposes. The director is authorized to develop public lands and manage for specific uses on public lands;

(6) Study, analyze and document the impacts of OHVs on surrounding habitat including habitat loss, resource damage, noise and vehicle emissions;

(7) Acquire lands, through purchase or lease, for OHV use. The director is encouraged to use property which is currently owned or leased by the state and which is appropriate for OHV use before acquiring lands from private landowners. The commissioners of the department of environment and conservation, the department of agriculture, the department of transportation and the heads of other state departments and agencies, where appropriate, are encouraged to make lands under their jurisdiction which are appropriate for OHV use, available to the director for use in the program. It is not the intent to open OHV use on any additional wildlife management areas or refuges without commission approval;

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(8) Develop and maintain a list of areas within the state that allow the use of OHVs;

(9) Enter into partnerships, contracts, and other management agreements, with other state, federal and local governments and private landowners to effectuate the purposes of this chapter;

(10) Make inspections and investigations, conduct studies and research or take such other action as may be necessary to carry out the provisions of this chapter, rules, and regulations issued pursuant thereto; and,

(11) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder.

SECTION 7. The commission is authorized to promulgate rules and regulations for the following purposes:

(1) To adjust, through rules and regulations, capital, registration and rider fees as established in this act. The commission is authorized to adjust the sportsman license fee to include a reduced registration fee for hunters;

(2) To establish safety requirements for riders on publicly owned or leased lands. Such requirements shall minimally include that riders under eighteen (18) years of age wear a helmet; and

(3) To promulgate any other rules and regulations as deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules and

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regulations shall be promulgated in accordance with the uniform administrative procedures act, compiled in Title 4, Chapter 5.

**SECTION 8.**

(a) A dealer shall pay a capital fee collected from purchasers OHVs quarterly to the department of revenue for any sale of an OHV subject to the certificate of title and special identification device provisions of Tennessee Code Annotated, Title 55, in order to effectuate the purposes of this chapter.

(b) Before issuing a certificate of title for any OHV, the county court clerk shall collect and pay a capital fee quarterly to the department of revenue for any sale of an OHV subject to the certificate of title and special identification device provisions of Title 55, Chapter 3, to effectuate the purposes of this chapter. The county court clerk may assess a reasonable clerk's fee in addition to the capital fee.

(c) The capital fee shall be paid on the total purchase price of the OHV including charges for the OHV, freight, dealer preparation, and documentation but excluding charges for accessories and attachments not normally supplied by the manufacturer.

(d) The capital fee is as follows:

(1) OHVs valued less than two thousand five hundred dollars  
(\$2,500.00) - twenty-five dollars (\$25.00);

(2) OHVs valued from two thousand five hundred dollars (\$2,500)  
to five thousand dollars (\$5,000) - fifty dollars (\$50.00);

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(3) OHVs valued more than five thousand dollars (\$5,000) -  
seventy-five dollars (\$75.00).

(e) The capital fee shall not be increased more than once every twelve  
(12) months by the commission as provided for in this act and shall not exceed  
the increase in the consumer price index (or successor index) since the last  
increase was imposed.

(f) The department of revenue shall transfer all proceeds collected to the  
agency on a monthly basis on the first of each month; provided that the  
department is not prohibited from using quicker methods of transfer. The  
department of revenue is directed to utilize the quickest method of transfer.

SECTION 9. The owner of an unregistered OHV or a motor vehicle designed  
and used primarily for on-roadway activities shall pay to the director a rider fee in order  
to ride or drive on publicly owned or controlled lands that allow OHVs. Rider fees, as  
established through rule and regulation by the commission, may be on a "per day" or a  
"multiple day" basis or as deemed appropriate. Such rider fees shall not be increased  
more than once every twelve (12) months and shall not exceed the increase in the  
consumer price index (or successor index) since the last increase was imposed.

SECTION 10. OHVs purchased and approved exclusively for farm use pursuant  
to the requirements of Title 67, Chapter 4 or used exclusively in a commercial business,  
shall not be subject to the payment of capital fee or registration fee requirements;  
provided that the use of such OHV off of the farm property or business site for

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recreational purposes shall subject the owner of the OHV to the requirements of this chapter.

**SECTION 11.**

(a) The funds received pursuant to the provisions of this chapter shall be used exclusively for the purpose of funding the operation, management and enforcement of the off-highway motor vehicle programs authorized under this chapter. The director may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise or lease, the fee or any lesser interest in land, development right, easement, covenant or other contractual right necessary to achieve the purposes of this chapter.

(b) It is the intent of the general assembly that the OHV program be self-funded. Use of any existing or future agency resources, revenues or funding not derived by or through the OHV program, to administer or enforce this program shall constitute a diversion of funds under § 70-1-104. Any future federal funds received for OHV or motorized trails shall be credited to the agency for use to administer and enforce the provisions of this act.

**SECTION 12.** The director may appoint a technical advisory committee that shall advise the director on OHVs covered by this chapter. The number of committee members shall be determined by the director and shall be composed of representatives of federal, state, and local agencies and of appropriate private organizations, including not-for-profit organizations, dealers and private citizens. No member of this committee is entitled to a salary for duties performed as a member of the committee. No member is



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entitled to reimbursement for travel or any other expenses incurred in the performance of official duties.

SECTION 13. It is an offense to ride an OHV upon the land of another without having first obtained the permission or approval of the owner of the land or of the person in charge of the land provided such person has authority from the owner to give such permission.

**SECTION 14.**

(a) A violation of the any provision of this chapter is a Class B misdemeanor.

(b) It is an offense for a parent or guardian to knowingly permit a minor to operate an OHV in violation of any provision of this chapter. A violation of this subsection is a Class B misdemeanor for a first offense and, for a second or subsequent offense, is punishable by a fine of two hundred fifty dollars (\$250).

(c) Upon conviction of a person for a violation of this act, the court may order restitution for damages caused by the violator or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the agency if the land on which the offense occurred was owned, leased, licensed to, or in some manner under agency control. Agency control includes, but is not limited to, control through any type of agreement or understanding with any private or governmental entity permitting land to be used in connection with the OHV program.

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(d) Upon conviction of a person for a violation of this act, the court may revoke the registration or suspend the privilege of obtaining a registration. Any registration so revoked shall be surrendered to the court and transmitted to the arresting officer to be made a part of the prosecution record. Any person whose registration has been revoked or whose privileges have been suspended may be prohibited from obtaining a registration for any OHV for a period of time of not less than one (1) year as determined by the court.

(e) Any OHV used in violation of sections 13 or 14 of this chapter may be seized and impounded pending a trial on the matter. If the defendant is convicted of a second or subsequent violation of sections 13 or 14 of this chapter, the court or jury trying the case shall determine whether or not the OHV shall be declared contraband. When an OHV is declared contraband, the court shall enter an order accordingly and the contraband property shall be placed in the custody of the arresting officer, to be delivered to the executive director, who shall advertise and sell the same at the courthouse or the county in which the offense was committed, as provided by law for sales under execution. The executive director is authorized to delay such advertisement and sale for a period not to exceed two (2) years from the date of the court order, during which time the OHV may be used in education programs or in law enforcement.

(f) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers including police officers, sheriffs, agency officers and other peace officers charged with the enforcement of the laws of this state.

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The primary responsibility for the enforcement and prosecution of this chapter on private lands, and on lands under local governmental ownership or control, is with local law enforcement officers. The primary responsibility for the enforcement and prosecution of this part on public lands not under local governmental ownership or control is with state law enforcement officers including agency officers; provided that it is not the legislative intent that the agency enforce trespass laws on private property unless the property is under state control.

SECTION 15. Tennessee Code Annotated, Section 70-7-104(2), is amended deleting the subdivision in its entirety and substituting instead the following:

(2) Injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee, cave, or any other legal purpose was granted for a consideration other than the consideration, if any, paid to the landowner by the state, the federal government, or any other governmental agency. This subsection shall not apply to OHV riding.

SECTION 16. In effectuating the provisions of this act, the agency and the commission shall place, first and foremost, the welfare of the wildlife and its environment and shall neither degrade nor permit degradation of the agency's statutory charge to protect and preserve the state's wildlife established in accordance with Article 11, Section 13 of the Constitution of Tennessee.

SECTION 17. Tennessee Code Annotated, Section 55-17-102(14), is amended by deleting the following language:

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and "motor home" as defined in § 55-1-104;

and by substituting instead the following language:

"motor home" as defined in § 55-1-104; and "off-highway vehicle" as defined in § 55-3-101(c)(2);

SECTION 18. Tennessee Code Annotated, Section 55-17-114(c), is amended by deleting the word "or" at the end of subdivision (24); by deleting the period at the end of subdivision (25) and substituting instead a semi-colon and the word "or"; and by adding the following language as a new subdivision to be designated as follows:

(26) Failed, within a reasonable period of time, to provide to the Tennessee department of revenue, or its successors, designees, or assignees, pertinent information including, but not limited to, the name, address, telephone number and vehicle identification number of purchasers of vehicles defined in § 55-3-101(c)(2) purchased after June 1, 1983 who:

(A) Claimed residence in Tennessee at the time of purchase and purchased such "new" or "demo" vehicle from a dealer located outside of the state of Tennessee; or

(B) Purchased such "used" vehicle and, subsequent thereto, the manufacturer, distributor, distributor branch, factory branch or officer, agent or other representative comes into possession, through any means, including, but not limited to, advice of the purchaser or seller or request by the purchaser for warranty or other repairs or modifications paid for by the manufacturer, distributor, distributor branch, factory branch or officer,

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agent or other representative, pertinent information, including, but not limited to, the name, address, phone number, vehicle identification number, of the purchaser;

The Tennessee department of revenue, or its successors, designees, or assigns, shall make every reasonable effort to collect sales and use taxes due on such purchases, and shall share this information with the director charged with authority to oversee registration of such vehicles pursuant to the Tennessee Off-highway Motor Vehicle Act, codified in title 70.

SECTION 19. Tennessee Code Annotated, Title 55, Chapter 3, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 55-3-138. The provisions of this part shall be cumulative to existing laws.

SECTION 20. Tennessee Code Annotated, Section 55-3-119, is amended by deleting the section in its entirety and by substituting instead the following:

Section 55-3-119. The transferee, before operating or permitting the operation of such vehicle upon a highway, or, in the case of vehicles defined in § 55-3-101(c)(2), the lands of the state, shall apply for and obtain a registration and apply for a certificate of title therefore in the manner provided in § 55-4-101, except as otherwise permitted in §§ 55-3-120 and 55-3-121, or, in the case of vehicles defined in § 55-3-101(c)(2), as provided in § 55-3-101(c).

SECTION 21. This act shall take effect upon becoming a law, the public welfare requiring it.